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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/686,356

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Shaun P. Cooley

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SYMANTEC/ FENWICK
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041

EXAMINER

KIM, TAE K

ART UNIT

PAPER NUMBER

2453

NOTIFICATION DATE

DELIVERY MODE

11/14/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptoc@fenwick.com
bhoffman@fenwick.com
aprice@fenwick.com

Office Action Summary	Application No. 10/686,356	Applicant(s) COOLEY, SHAUN P.	
	Examiner TAE K. KIM	Art Unit 2453	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-9 and 11-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-9 and 11-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is in response to the Applicant's response filed on August 12, 2008. Claims 5, 6, and 10 have been cancelled by the Applicant. Claims 1, 3, 7, 8, and 15 - 18 have been amended by the Applicant. Claims 21 - 23 have been added by the Applicant. Claims 1 - 4, 7—9, and 11 - 23, where Claims 1, 16, and 18 are in independent form, are presented for examination.

Response to Arguments

Applicant's arguments filed on August 12, 2008 have been fully considered but they are moot based on the new grounds of rejection as stated below.

Examiner's Note: Applicant added additional language to the claims that were not initially in Claims 5 and 6. Claims 1, 16, and 18 include additional language that states "responsive to at least one of the foreground color and the background color being a gray-scale color, *deeming the difference between the colors to be negligible based on a comparison of saturation and brightness values of the colors regardless of hue values of the colors.*"

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 - 3, 7 - 9, and 11 - 23 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Appl. 2004/0221062, filed by Bryan T. Starbuck et al. (hereinafter "Starbuck"), in view of U.S. Patent 5,751,847, invented by Robert Wuyts (hereinafter "Wuyts")

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1. Regarding Claims 1, 16, and 18, Starbuck discloses a method for countering spam that disguises characters within an electronic message [Para. 0009], said method comprising the steps of:

locating portions of the electronic message where the difference between foreground color and background color is negligible [Figs. 4A and 4B; Para. 0032 and 0038; factors such as size, color, font, formatting, and inclusion of the text inside of a link may change the weight of the word in the filter, thus character, word, and/or text segmentation may be performed based upon features of the character or groups of characters, such as color or visibility, to determine that weight; for example, if a word or character is white or very light grey text on a white background, the word or character is essentially invisible and that portion is removed from the message prior to filtering]; comprising:

determining whether at least one of the foreground color and the background color is a gray-scale color [Para. 0032; examining size, color, font, and formatting of various words, such as if a word or character is rendered as white or very light grey text on a white background, the word or character is essentially invisible]; and

responsive to at least one of the foreground color and the background color being a gray-scale color, deeming the difference between the colors to be negligible [Para. 0032; examining size, color, font, and formatting of various words, such as if a word or character is rendered as white or very light grey text on a white background, the word or character is essentially invisible];

deleting from the electronic message foreground characters from said portions, to form a redacted electronic message [Para. 0038; invisible or nearly invisible words and characters should be removed forming a modified text-only formatted message]; and

forwarding the redacted electronic message to a spam filter [Fig. 3, items 306, 308].

Starbuck, however, does not specifically disclose that the deeming the difference between the colors to be negligible is based on a comparison of saturation and brightness values of the colors regardless of hue values of the colors.

Wuyts discloses an image processing method for determining the color or color code based on the brightness, saturation, and hue levels [Fig. 5; Abstract]. Wuyts further discloses that the brightness value of the examined color is first determined, then the saturation value of the examined color to determine if the color is colorless [Fig. 5]. If the color is determined to be colorless, only the brightness level of the color is evaluated until a specific gray-scale is determined for the examined color; the hue value is not determined for gray-scale colors [Fig. 5]. Therefore, if either the foreground or background color is a gray-scale color, the Wuyts method would only have determined the brightness and saturation values for that particular foreground and/or background image and a comparison hue values will not be irrelevant.

It would have been obvious to one skilled in the art at the time of the invention to incorporate the teachings of Wuyts to Starbuck by incorporating the method of determining the brightness and saturation values of the evaluated message before the

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hue values within the converting component to eliminate words that were determined to be essentially invisible in the message. The Wuyts color determination method is implemented in software form and can readily be coded into the converting component of Starbuck.

The motivation to do so is to simplify the comparing between the foreground and background color of the message by eliminating the hue value determination when either the foreground or background color is a gray-scale color. Doing so will simplify the comparing process under certain situations to two values instead of three values, which reduces the load on the processor handling this comparison process.

2. Regarding Claims 2 and 23, Starbuck, in view of Wuyts, discloses all the limitations of Claim 1 above. Starbuck further discloses of setting a negligibility threshold such that when the difference between foreground color and background color is negligible for a certain portion of the electronic message [Para. 0032; if a word or character is rendered as white or very light grey text on a white background, the word or character is essentially invisible], said portion is invisible or nearly invisible to a typical human viewer of the electronic message [Para. 0033; if these words are included white-on-white color, the words may make the message less spam-like according to filters and users would not see them at all].

3. Regarding Claims 3, 9, and 17, Starbuck, in view of Wuyts, discloses all the limitations of Claims 1 and 16 above. Wuyts further discloses that, responsive to neither the foreground color nor the background color being a gray-scale color, the color determination step includes determining the hue, saturation, and brightness [Fig. 5].

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4. Regarding Claims 7 and 8, Starbuck, in view of Wuyts, discloses all the limitations of Claim 1 above. Neither Starbuck nor Wuyts specifically disclose of determining whether or not the differences in brightness, saturation, or hue between the foreground and background are negligible based on certain percentages.

Applicant has failed to seasonably challenge the Examiner's assertions of well known subject matter in the previous Office action(s) pursuant to the requirements set forth under MPEP §2144.03. A "seasonable challenge" is an explicit demand for evidence set forth by Applicant in the next response. Accordingly, the claim limitations the Examiner considered as "well known" in the first Office action, i.e. *"the negligibility of an electronic message can be determined if there are small percentage differences in the brightness, saturation, and hue of the foreground to the background,"* are now established as admitted prior art of record for the course of the prosecution. See *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

Furthermore, the percentage differences in saturation, brightness, and hue to determine whether or not the text is negligible can vary depending on the designer's preferences. To determine if the difference between the foreground and background color is negligible when: a) the difference in saturation between foreground and background is less than 5% and the difference in brightness between foreground and background is less than 4%, or b) the difference in saturation between foreground and background is less than 3% and the difference in brightness between foreground and background is less than 2%, would have been a designer's choice in implementing the system taught by Starbuck, in view of Wuyts.

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5. Regarding Claim 11, Starbuck, in view of Wuyts, discloses all the limitations of Claim 9 above. Neither Starbuck nor Wuyts specifically disclose of determining whether or not the differences in brightness, saturation, or hue between the foreground and background are negligible based on certain degrees and percentages.

Applicant has failed to seasonably challenge the Examiner's assertions of well known subject matter in the previous Office action(s) pursuant to the requirements set forth under MPEP §2144.03. A "seasonable challenge" is an explicit demand for evidence set forth by Applicant in the next response. Accordingly, the claim limitations the Examiner considered as "well known" in the first Office action, i.e. *"the negligibility of an electronic message can be determined if there are small percentage differences in the brightness, saturation, and hue of the foreground to the background,"* are now established as admitted prior art of record for the course of the prosecution. See *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

Furthermore, the percentage or degrees of differences in saturation, brightness, and hue to determine whether or not the text is negligible can vary depending on the designer's preferences. To determine if the difference between the foreground and background color is negligible when the difference in hue between foreground and background is less than 4 degrees and the combined difference in saturation and brightness values of the foreground and background is less than 12%, would have been a designer's choice in implementing the system taught by Starbuck, in view of Wuyts.

6. Regarding Claims 12, 15, and 20, Starbuck discloses all the limitations of Claims 1 and 18 above. Starbuck further discloses that the electronic message consists of e-

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mail [Para. 0009], and the locating step comprises using a HTML parser [Para. 0009; HTML rendering engine to strip the HTML instruction for all non-substantive aspects of the message].

7. Regarding Claims 13 and 19, Starbuck, in view of Wuyts, discloses all the limitations of Claims 1 and 18 above. Starbuck further discloses that the locating step comprises using a color comparison module [Para. 0032; system examines the color of the various words in comparison to the background].

8. Regarding Claim 14, Starbuck, in view of Wuyts, discloses all the limitations of Claim 1 above. Starbuck further discloses that the spam filter is responsive to characters within the electronic message [Para. 0032 and 0038; invisible or nearly invisible words and characters should be removed so the spam filter will not be confused by their presence].

9. Regarding Claims 21 and 22, Starbuck, in view of Wuyts, discloses all the limitations of Claims 1 and 16 above. Wuyts further discloses that the saturation value is compared to a reference value to determine if that particular color is one of gray-scale color [Fig. 5]. Since the designer of the comparison module in Starbuck will determine the reference value, it would have been the designer's choice to select the reference value to be so that the saturation value of the examined color is be zero to be determined to be one of gray-scale color.

Claim 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Starbuck, in view of Wuyts, ,in further view of U.S. Appl. 2002/0113801, filed by Maire Reavy et al. (hereinafter "Reavy").

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10. Regarding Claim 4, Starbuck, in view of Wuyts, discloses all the limitations of Claim 3 above. Starbuck nor Wuyts, however, specifically discloses that the red, green, and blue components of the foreground and background colors in the electronic message is converted into hue, saturation, and brightness values.

Reavy discloses that the hue of the foreground and background must be evaluated, including the red, green and blue components of the background and foreground, to determine the legibility of the text to a user on a display [Fig. 1, items 104 and 106; Para. 0010, 0036, 0037]. It would have been obvious to one skilled in the art at the time of the invention to evaluate the red, green and blue components of the background and foreground to determine the visibility of text within an electronic message. The electronic message would be viewed by a user on a display terminal and the legibility would be determined by the red, green and blue components to determine the hue of the background and foreground comparisons between the foreground and background. This would allow the determination of whether or not the text within the electronic message is visible to the user.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae K. Kim, whose telephone number is (571) 270-1979. The examiner can normally be reached on Monday - Friday (8:00 AM - 5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne, can be reached on (571) 272-4001. The fax phone number for submitting all Official communications is (703) 872-9306. The fax phone number for submitting informal communications such as drafts, proposed amendments, etc., may be faxed directly to the examiner at (571) 270-2979.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

/Tae K. Kim/
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/ARIO ETIENNE/

Supervisory Patent Examiner, Art Unit 2457